

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Counsel to the Plan Administrator

In re:

20230930-DK-BUTTERFLY-1, INC. f/k/a Bed Bath &
Beyond, Inc., *et.al.*,
Debtors.

MICHAEL GOLDBERG, as Plan Administrator for
20230930-DK-BUTTERFLY-1, INC. f/k/a Bed Bath &
Beyond, Inc.,
Plaintiff,

v.

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY,
Defendant.

Chapter 11

Case No. 23-13359(VFP)

(Jointly Administered)

Adversary Proceeding No. 24-01443-VFP

**APPELLANT'S DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD
ON APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED**

Michael Goldberg, in his capacity as Plan Administrator (the “Plan Administrator” or “Appellant”) for 20230930-DK-Butterfly-1, Inc. f/k/a Bed Bath and Beyond, Inc.¹ and affiliated debtors (the “Debtors”), by and through undersigned counsel, pursuant to Federal Rule of Bankruptcy Procedure 8009, submits his Designation of Items to be Included in the Record on Appeal and Statement of Issues to be Presented as follows:

DESIGNATION OF THE RECORD

Filing Date	Docket No.	Description
6/3/2024	1	Complaint
6/25/2024	7	Order Granting Application to Allow Attorney Raye Elliott as Counsel to Plaintiff/Plan Administrator to Appear <i>Pro Hac Vice</i>
6/25/2024	8	Order Granting Application to Allow Attorney Peter Larsen as Counsel to Plaintiff/Plan Administrator to Appear <i>Pro Hac Vice</i>
7/19/2024	16	Order Granting Application to Allow Attorney Eliott Berman to Appear <i>Pro Hac Vice</i>
8/15/2024	19	Answer to Complaint by Defendant New Jersey Economic Development Authority
12/6/2024	22	Motion for Judgment on the Pleadings by Defendant New Jersey Economic Development Authority
12/6/2024	24	Declaration of Susan Greitz in Support of Motion for Judgment on the Pleadings
12/6/2024	25	Declaration of Eliott Berman in Support of Motion for Judgment on the Pleadings
12/20/2024	30	Memorandum of Law in Opposition to Defendant’s Motion for Judgment on the Pleadings
12/31/2024	31	Reply Memorandum of Law in Further Support of Defendant’s Motion for Judgment on the Pleadings
1/16/2025	35	Transcript Regarding Hearing Held 1/14/2025
2/4/2025	37	Order Granting Without Prejudice Defendant’s Motion for Judgment on the Pleadings
3/6/2025	41	Motion for Leave to File Amended Complaint filed by Plaintiff
3/6/2025	42	Defendant’s Supplemental Memorandum of Law Regarding the August 7, 2023 Letters
4/7/2025	44	Brief in Opposition to Plaintiff’s Motion for Leave to File Amended Complaint

¹ Pursuant to the Certificate of Amendment of the Certificate of Incorporation of Bed Bath & Beyond, Inc. which was filed with the State of New York Department of State on September 21, 2023, the name of the entity formerly known as “Bed Bath & Beyond, Inc.” was changed to 20230930-DK-Butterfly, Inc.

Filing Date	Docket No.	Description
4/7/2025	45	Declaration of Elliott Berman in Opposition to Plaintiff's Motion for Leave to File Amended Complaint
4/7/2025	46	Plaintiff's Response to Defendant's Supplemental Memorandum of Law Regarding the August 7, 2023 Letters
5/19/2025	51	Order Denying Plaintiff's Motion for Leave to File Amended Complaint
5/20/2025	52	Transcript Regarding Hearing Held 5/13/2025
5/30/2025	56	Notice of Appeal

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

Appellant has taken this appeal from the Court's Order Denying Plaintiff's Motion for Leave to File Amended Complaint (Doc. 51). The issues presented by Appellant are as follows:

1. Did the Bankruptcy Court commit reversible error by denying Plaintiff's Motion for Leave to File Amended Complaint?
2. Did the Bankruptcy Court commit reversible error by holding that the New Jersey Contractual Liability Act, N.J.S.A. § 59:13-1, *et. seq.*, applies to the contracts between the Debtors and Defendant/Appellee?
3. If the New Jersey Contractual Liability Act applies, did the Bankruptcy Court commit reversible error by holding that Plaintiff/Appellant did not substantially comply with the New Jersey Contractual Liability Act?
4. Did the Bankruptcy Court commit reversible error by holding that Plaintiff/Appellant's filing of an amended complaint would be futile?

Dated: June 13, 2025

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By: /s/ Steven R. Wirth

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